

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 705 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GULAMFARID SULTANBHAI SHEIKH

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 07/07/98

ORAL JUDGEMENT

The petitioner has challenged the legality and validity of the detention order dated 17.12.1997 passed under section 3(2) of the Gujarat Prevention of ANti Social Activities Act, 1985, by the Commissioner of Police, Ahmedabad city, in this petition under Article 226 of the Constitution of India.

In the grounds of detention supplied to the

petitioner, the detaining authority has placed reliance about the involvement of the petitioner in nine criminal cases filed under sec. 379 of IPC alleged to have taken place for the period between 1994-1997. Surprisingly, the investigation is in progress in all nine cases and no charge-sheet is filed. Besides these criminal cases, a reliance is also placed on the statement of four witnesses for the alleged incident dated 15.11.1997 and 25.11.1997, wherein the petitioner had tried to extort money by keeping spare wheel of scooter and/or Yamaha Motor Cycle as security and when the witness refused to accept the same being theft article, the witnesses were beaten on the public road. Many people gathered, however, they all started running helter and skelter when the petitioner rushed towards them with open knife and, therefore, there was an atmosphere of fear and terror and public life was disturbed. Considering this material, the detaining authority was of the view that the petitioner is a dangerous person within the meaning of section 2(c) of the Act and, therefore, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is passed.

This petition is required to be allowed on the first submission of Mr. Tirmizi, wherein it was contended that even if the allegations made in the criminal cases as well as the incidents in question are accepted on their face value, the same cannot be termed as the breach of public order as these offences are against the individuals. There is considerable substance in the submissions of Mr. Tirmizi. Reading the impugned order, it is clear beyond in any manner of doubt that even though the nine criminal cases under sec. 379 of IPC have been registered against the petitioner right from 9.4.1997, the police has not been able to file the charge-sheet in competent court. Reading the statements of the witnesses with respect to incidents dated 15.11.1997 and 25.11.1997, assuming that they are true, the same at the most can be treated as the breach of law and order and not the breach of public order. The statements are quite general and vague, the public at large is not concerned about the individual offences. IN view of this, the satisfaction arrived at by the detaining authority treating the petitioner as dangerous person does not appear to be genuine and, therefore, the detention order vitiates.

IN the result, this petition is allowed. The impugned order of detention dated 17.12.1997 is set aside. The petitioner is ordered to be released forthwith, if he is not required for any other lawful

reason. Rule made absolute.

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